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Attorneys for Plaintiff Blendtec Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC, INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,
MAVORCO HOLDINGS, LLC, a
Delaware limited liability company,
MAVORCO IP, LLC, a Delaware limited
liability company, and **MAVORCO
OPERATIONS, LLC**, a Delaware limited
liability company,

Defendants.

**DECLARATION OF DAVID FRANKLYN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

Civil Case No. 2:25-cv-00096-DBP
Judge Dustin B. Pead

I, DAVID FRANKLYN, hereby declare as follows:

1. I am a professor of intellectual property at Arizona State University and a director for the Thomas McCarthy Institute for IP and Technology Law. I have been retained by Blendtec Inc. ("Blendtec") in *Blendtec Inc. v. Blendjet Inc.*, Case No. 2:21-cv-000668-TC-DBP, pending in

the United States District Court for the District of Utah (the “2021 Action”) to provide an expert opinion regarding a likelihood of confusion between the parties’ respective “BLENDTEC” and “BLENDJET” and Swirl Design Marks in the 2021 Action. I am fully familiar with the facts set forth in this declaration from personal knowledge or from documents that I have reviewed. If called as a witness, I could and would testify competently under oath to the facts contained herein.

2. I conducted a survey regarding the likelihood of confusion and have summarized my opinions to date in an expert report (attached hereto as **Exhibit 1**).

3. Based on the research I describe in the report, it is my opinion that the Blendjet name and swirl logo in connection with the sale of blenders creates a significant level of consumer confusion with Blendtec among past and prospective purchasers of blenders. *See id.* at p. 9, 31.

4. I have found a 26.9% confusion rate for retail stores and a 14.0% confusion rate online, for a combined confusion rate of 20.5%. As stated in my report, the overall confusion rate here strongly supports a likelihood of confusion in this case.

DATED this 24th of March, 2025



David J. Franklyn

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2025, a true and correct copy of the foregoing document was served on counsel of record via the Court's CM/ECF System which sent notice to the following counsel of record:

George B. Hofman, IV: ghofmann@cohnekinghorn.com

Kathryn Tunacik: ktunacik@ck.law

In addition, I hereby certify that on the 27th day of March, 2025, a true and correct copy of the foregoing document was served on Defendant Blendjet Inc., who is unrepresented in this action, via email to John Zheng, Chief Revenue Officer of Blendjet, at john@blendjet.com.

/s/ Tamara L. Kapaloski